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December 17, 2004

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Water Quality Program
Washington Department of Ecology
P.O. Box 47600
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Department of Ecology
Water Quality Program
DEC 20 2004

Subject: Comments on Washington Water Quality Assessment

Dear Mr. Koch:

Weyerhaeuser Company appreciates this opportunity to once again present comments on the *Draft 2002 and 2004 Water Quality Assessment and 3 05(b) Report* (hereafter, "the Report"). We note from a review of the November 2004 comment responsiveness summary that Ecology gave fair consideration to most of the Weyerhaeuser questions and suggestions submitted on the March 2004 draft of this Report.

On four subjects raised in our comments, however, we continue to disagree with the decision and reasoning articulated by the agency.

1. Washington's Forest Practices Act should be recognized as an "other pollution control requirement" as the term is used in 40 CFR 130.7(b)(1) and a "Pollution Control Plan" as this term is used in the Category 4b description in WQP Policy

1-11. Waterbody/pollutant combinations proposed for Category S listing which are impaired due to non-point source inputs from forested lands regulated under the Washington Forest Practices Act should be reassigned to Category 4b or 4a.

Of specific interest to Weyerhaeuser are these waterbodies:

Waterbody Name	Listing ID Number	Impaired Parameter	Township/Range/Section
Deschutes River	7588	Temperature	1 SN/3E/S7
Schultz Creek	7803	Temperature	1 ON/3 E/S23
Hoffstadt Creek	7800	Temperature	1 ON/4E/S 10
Herrington Creek	7799	Temperature	9N/3E/S28
Mulholland Creek	7802	Temperature	8N/IE/S17
Baird Creek	7790	Temperature	8N/2E/S 18
Joe Creek	6906	Temperature	1 6N/8 W/S3 1
East Fork North River	6905	Temperature	I 6N/9W/S29
Lower North River	6909	Temperature	1 6N/9W/S32

Lower Elkhorn Creek	6912	Temperature	I SN/9W/S23
Smith Creek	3779	Temperature	I 5N/8W/S26

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Discussion — Ecology’s response to the comments by Weyerhaeuser, the Washington Forest Protection Association, and perhaps others, to this request was:

“The state forest practices rules have not been implemented long enough to be able to determine if the regulations will effectively meet water quality standards. Ecology has clearly stated in WQ Policy 1-11 that waterbody segments affected by new rules designed to meet standards (such as forest practices) will be assigned a low priority for TMDLs, and will be reevaluated in the next listing cycle to determined if placement in Category 4b is appropriate.”

Ecology *Responsiveness Summary*, November 3, 2004, ppgs 28-29 and elsewhere

The agency’s position on this request is, effectively, a “no confidence” vote on the ability of the Forest Practices Regulations to achieve and maintain state water quality standards. Yet the Forest and Fish Law (1999) and incorporation of its statutory provisions into the Forest Practices Regulation (2001) are specifically designed to accomplish all Clean Water Act obligations. The Department of Ecology was represented in the negotiation of the Forest and Fish Agreement, in the legislative and regulatory deliberations, and sits as a member of the Forest Practices Board. The agency has consistently supported the adequacy of the Forest Practices Regulation (FPR) to move waterbodies historically impacted by forest management activities into compliance with state water quality standards.

It is incongruous for Ecology to maintain that FPR requirements somehow fall short of achieving the functional criteria presented in the WQP Policy 1-11 Category 4b (or 4a, for that matter) and to deny the re-categorization of these waterbodies. Ecology should honor the policy underpinnings and robustness of the FPR in the decision-making on this 303(d) listing exercise.

If there continues to be resistance to this request, Ecology needs to explicitly articulate what aspect of the 4b and/or 4a criteria are not functionally achieved by the FPA. It is not sufficient to say that the FPR “have not been implemented long enough to be able to determine if the regulation will effectively meet water quality standards.”

If the length of FPR efforts to achieve and maintain water quality beneficial uses and water quality standards is truly a decision factor, Ecology should be reminded of this history:

1996 - Forest Practices Board adopts an emergency rule to modify the water typing system, redefined Type 2 and 3 waters, and implemented new guidelines for determining fish use for waterbody typing. Ecology co-

adopted these rules.

1999 — Forest Practices Board adopted emergency rules to provide improved habitat protection and water quality for threatened and endangered salmonids. Ecology co-adopted these emergency rules.

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2001 — Forest Practices Board adopts permanent rules to implement the landmark Forest and Fish legislation. Ecology co-adopts this regulation.

Even if Ecology determines, after nearly a decade of rule change and landowner implementation, that the Forest Practices Regulation is not effective in achieving water quality standards, note that the FPR includes an adaptive management provision to address any regulatory shortfalls. The means to achieve and maintain water quality standards in forested areas will be through FPR implementation. This directly fits the description of what a Pollution Control Plan is (Category 4b). The implication of a Category 5 listing is the need for creation of a formal TMDL. That mechanism will never be used for these waterbodies.

2. Listing Identification #21303 Columbia River Temperature. Weyerhaeuser requests that the referenced waterbody segment be moved from the Category 5 list to another appropriate Category.

Discussion - Weyerhaeuser's comment in March 2004 cautioned against basing a Category 5 listing decision solely on waterbody segment data indicating temperatures of greater than 20°C. Note that the "Listing Basis" for Listing ID #2 1303 states

"Continuous monitoring data from a study by Parametrix (2002 and 2003) indicates exceedances of the numeric temperature criteria of 20° at RM 71.9 in 2002 and 2003."

Our comments pointed out that assessment of the WAC 173-201A numeric temperature criteria involves a multi-step analysis which necessarily must include a consideration of the "natural condition" of the waterbody. The Northwest Pulp and Paper Association comments on waterbody segment #2 1303 offered similar caution. Should the natural condition of the waterbody be demonstrated to be greater than 20.0°C, then allowable point and non-point source incremental increases are defined by the regulation.

Ecology's November 2004 response indicates the agency apparently made no effort to properly and fully evaluate available data for this waterbody segment against all components of Washington's numeric water quality criteria.

"No change. Data from the Parametrix study was provided to Ecology and

used
as a basis for several temperature listings on the Columbia River. The Parametrix study makes the assumption that temperature exceeding the limits are entirely from natural conditions. Ecology believes it is premature to determine natural conditions pending results of the Temperature TMDL underway by EPA.”

Ecology *Responsiveness Summary*, November 3, 2004, page 30 and elsewhere.

This is admittedly a frustrating situation. We note:

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- EPA’s effort to develop a TMDL for Temperature is hopelessly stalled. The last EPA update of work progress was shared in July 2002. There is no indication when, or if, a final TMDL will ever be published and approved.
- Ecology’s 303(d) list process is happening now. The agency is obliged to evaluate available water quality information using WQP Policy 1-11 to make appropriate and defensible categorization decisions.
- Fundamentally, the agency needs to fully consider all of the relevant provisions of Washington’s water quality standard. For the temperature parameter this includes more than a simple “greater than or less than” determination against the relevant numeric criteria.
- The docket developed for the production of this Report includes ambient water quality data for the mainstem Columbia River which demonstrates that
 - 1) 20°C has been exceeded for every year of record for over a century, and
 - 2) the waterbody segment defined by ID#2 1303 does not show evidence of a greater than 0.3°C increase due to point source contribution; i.e., the Parametrix studies in 2002 and 2003.

Consistent with our March 2004 comments, Weyerhaeuser requests that this segment of the Columbia River be moved from the proposed Category S listing to another category.

3. Listing Identification #10319 Grays Harbor — Ecology’s evaluation of available data apparently did not include consideration of “natural conditions.” The appropriate assessment of available data would result in a Category 2 listing.

Discussion - Weyerhaeuser’s March 2004 comment offered that absent a very localized influence from a point source discharge it is improbable that chronically low water column pH could be due to anything other than a “natural condition”

(this is a marine water, after all). In response to this comment, Ecology's Responsiveness Summary reads

"No change. Data was assessed based on whether it exceeded the limits for the particular water. Unless information was provided to show that the exceedence was natural and human influences were not a factor, Ecology used the data as a basis (sic)"

Ecology Responsiveness Summary, November 3, 2004, page 29.

If a point source discharge is implicated in these data results, an NPDES permit revision is appropriate and no Report listing is warranted. Absent a point source impact, Ecology is obliged to fully apply the WAC 173-201A criteria in completing this assessment. Given the factual information provided, the agency should critically consider what the "natural condition" of the waterbody is. This regulatory determination should occur before the agency arbitrarily defaults the waterbody to a Category 5 listing. A Category 2 listing seems appropriate.

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4. Listing Identification # 10352 Willapa River— Consistent with WQP Policy 1-11, a "seasonal listing" for this Category 5 waterbody should be specified.

Discussion - Weyerhaeuser's March 2004 comment noted that historic low dissolved oxygen data from Ecology monitoring station WPAOOI is all confined to the August 1 — September 1 *S* period (reference is "*Willapa River Total Maximum Daily Load Study — Data Summary Report*," Ecology Report #00-03-005, pages C.6.4. through C.6.12, January 2000.) Consistent with the "Seasonal listings" provision in WQP Policy 1-11, Weyerhaeuser requested that any Category 5 listing be limited to the time period when numeric water quality have been shown to be exceeded. The agency's response to this comment was

"Data was consolidated from EIM. Specific periods of time are available from EIM."

Ecology Responsiveness Summary, November 3, 2004, page 29.

This response is a non-answer. Ecology's own policy provides for seasonal listings. In this instance the water quality data provides a factual basis to implement the policy. In the response to this comment the agency should define whether seasonal listing determinations will be implemented in the Report, or rather in any TMDL being developed for the waterbody.

Feel free to contact me at 253-924-3426 if additional information or discussion on these comments would be helpful.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ken Johnson". The signature is fluid and cursive, with the first name "Ken" and last name "Johnson" clearly distinguishable.

Ken Johnson
Washington Regulatory Affairs Manager